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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
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11 LOUIE GIANNINI,) No. ED CV 09-02253-JVS (VBK)
12)
13) Petitioner,) ORDER SUMMARILY DISMISSING PETITION
14) v.) FOR WRIT OF HABEAS CORPUS FOR LACK
15) OF SUBJECT MATTER JURISDICTION
16)
17) JAMES D. HARTLEY,)
18)
19) Respondent.)
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On December 10, 2009, Louie Giannini (hereinafter referred to as "Petitioner") filed a "Petition for Writ of Habeas Corpus by a Person in State Custody Pursuant to 28 U.S.C. §2254" and a "Petition for Writ of Habeas Corpus and Memorandum Ad Testificandum of Points and Authorities in Support Thereof." Petitioner was convicted on January 7, 1997 in San Bernardino County Superior Court.¹ (See Petition at 2.) Petitioner has raised the following claims: "(1) ineffective assistance of counsel; (2) judicial error; (3) discovery violation; and (4) ineffective assistance of appellate counsel." (See Petition at 5-6; attached pages 5-72.)

¹ Petitioner has failed to provide the nature of the offenses involved, the Penal Code sections or the length of his sentence.

1 It appears from the face of the petition that it is directed to
 2 the same 1997 San Bernardino County Superior Court conviction as a
 3 prior habeas petition filed by Petitioner in this Court on January 22,
 4 2001, in Case No. ED CV 01-00647-DT (VBK).² On October 4, 2002,
 5 Judgment was entered in Case No. ED CV 01-00647-DT (VBK) denying the
 6 petition and dismissing the action with prejudice, pursuant to the
 7 District Judge's Order approving and adopting the Magistrate Judge's
 8 Report and Recommendation.

9 The Petition now pending is governed by the provisions of the
 10 Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104-
 11 132, 110 Stat. 1214)("the Act"), which became effective April 24,
 12 1996. Section 106 of the Act amended 28 U.S.C. § 2244(b) to read, in
 13 pertinent part, as follows:

14 "(2) A claim presented in a second or successive habeas
 15 corpus application under section 2254 that was not presented in
 16 a prior application shall be dismissed unless--

17 ² The Court takes judicial notice of its own files and
 18 records. See Mir v Little Co. of Mary Hosp., 844 F.2d 646, 649 (9th
 19 Cir. 1988). On January 22, 2001, Petitioner filed a "Petition for Writ
 20 of Habeas Corpus by a Person in State Custody" which was given Case
 21 No. ED CV 01-00647-DT (VBK). In this petition, Petitioner raised the
 22 following claims: "(1) Ineffective assistance of trial counsel.
 23 Petitioner was denied assistance of any counsel whatsoever due to
 24 prejudice and counsel's pre-opinion of guilt; (2) Judicial error. The
 25 trial court ignored an attorney-client conflict of interest; (3)
 26 Judicial error. Allowing prejudicial uncharged or similar acts
 27 evidence into the trial; (4) Judicial error. The court abused its
 28 discretion by appointing Petitioner pro per on the advice of counsel,
 knowing Petitioner was not knowledgeable or qualified to waive any
 constitutional rights; (5) Ineffective assistance of appellate
 counsel. Counsel refused to submit meritorious issues to the
 Appellate Court; issues that were submitted to the Appellate Court
 were confusing, misleading and false; (6) Judicial error. Petitioner
 was denied counsel when presenting a motion for a new trial and during
 the sentencing phase; and (7) Petitioner received untimely and
 improper prosecution discovery."

1 (A) the applicant shows that the claim relies on a new
2 rule of constitutional law, made retroactive to cases on
3 collateral review by the Supreme Court, that was previously
4 unavailable; or

5 (B)(i) the factual predicate for the claim could not
6 have been discovered previously through the exercise of due
7 diligence; and

8 (ii) the facts underlying the claim, if proven and
9 viewed in light of the evidence as a whole, would be
10 sufficient to establish by clear and convincing evidence
11 that, but for constitutional error, no reasonable factfinder
12 would have found the applicant guilty of the underlying
13 offense.

14 (3)(A) Before a second or successive application permitted
15 by this section is filed in the district court, the applicant
16 shall move in the appropriate court of appeals for an order
17 authorizing the district court to consider the application."

18 (Emphasis Added.)
19


20 The Petition now pending constitutes a second and/or successive
21 petition challenging the same conviction as Petitioner's prior habeas
22 petition, within the meaning of 28 U.S.C. § 2244(b). Thus, it was
23 incumbent on Petitioner under § 2244(b)(3)(A) to secure an order from
24 the Ninth Circuit authorizing the District Court to consider the
25 Petition, prior to his filing of it in this Court. Petitioner's
26 failure to do so deprives the Court of subject matter jurisdiction.

27 For the foregoing reasons, **IT IS ORDERED** that this action be
28 summarily dismissed pursuant to Rule 4 of the Rules Governing Section

1 2254 Cases in the United States District Courts.

2 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

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4 DATED: December 16, 2009



JAMES V. SELNA
UNITED STATES DISTRICT JUDGE

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7 Presented this 14th day of
8 December, 2009 by:

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10 /s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE